



CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

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EXECUTIVE DIRECTOR
JUDITH BLACKWELL

DATE: November 3, 2020

TO: Low Income Housing Tax Credit Stakeholders

FROM: Judith Blackwell, Executive Director

RE: Final Proposed Regulation Changes and Responses to Comments

On September 30, 2020, the California Tax Credit Allocation Committee (“TCAC” or “Committee”) released proposed regulation changes focusing on the Further Consolidated Appropriations Act, 2020 (“FCAA” or “Disaster”) credits. TCAC staff subsequently held a public hearing in Sacramento and virtually on October 15, 2020. TCAC accepted written comments on these initial proposed regulation changes through Wednesday, October 21, 2020. Numerous individuals, organizations, and groups formally commented on the proposed regulation changes. TCAC staff carefully considered all comments received and has finalized the recommendations to the Committee for consideration and adoption on Wednesday, November 18, 2020.

This memo includes the final proposed regulation changes, staff’s responses to comments including explanations to any proposed revisions to the initially proposed changes, which are highlighted in yellow. TCAC will publish a matrix summarizing the public comments in a subsequent document.

**Proposed Regulation Changes, Comments Received, and Responses to Comments
November 3, 2020**

Section 10310(b)(1)

Initial Proposed Change:

- (b) Credit Ceiling available. The approximate amount of Tax Credits available in each reservation cycle shall be established by the Committee at a public meeting designated for that purpose, in accordance with the following provisions:
 - (1) Amount of Federal Tax Credits. The amount of Federal Tax Credits available for reservation in a reservation cycle shall be equal to the sum of:
 - (A) the per capita amount authorized by law for the year, plus or minus the unused, Federal Credit Ceiling balance from the preceding calendar year, multiplied by a percentage amount established by the Committee for said cycle;
 - (B) the amount allocated, and available, under IRC Section 42(h)(3)(D) as of the date that is thirty days following the application deadline for said cycle;
 - (C) the amount of Federal Credit Ceiling returned, and available, as of the date that is thirty days following the application deadline for said cycle; and,
 - (D) additional amounts of Federal Credit Ceiling, from the current or subsequent year, necessary to fully fund projects pursuant to the allocation procedures set forth in these regulations.

For calendar years 2020, and 2021 if applicable, the amount of the Federal Credit Ceiling established by the Further Consolidated Appropriations Act, 2020 shall be allocated pursuant to Section 10325(d)(1).

Comments Received: While some comments were received relating to the allocation of the remaining Disaster Credits, no comments were received specifically for this proposed change.

Final Proposed Changes: Proceed with changes as initially proposed.

Section 10325(d)(1)

Initial Proposed Change:

- (1) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside, followed by the Rural set-aside (funding the RHS and HOME program apportionment first, and the Tribal pilot apportionment second), the At Risk set-aside, and the Special Needs set-

aside, the highest scoring applications will have Tax Credits reserved. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315, with the exception of the Federal Credit amount established by the Further Consolidated Appropriations Act, 2020 (“FCAA”). If the last project funded in a set-aside requires more than the credits remaining in that set-aside, such overages in the first funding round will be subtracted from that set-aside in determining the amount available in the set-aside for the second funding round. If Credits are not reserved in the first round they will be added to second round amounts in the same Set Aside. If more Tax Credits are reserved to the last project in a set-aside than are available in that set-aside during the second funding round, the overage will be taken from the Supplemental Set-Aside if there are sufficient funds. If not, the award will be counted against the amounts available from the geographic area in which the project is located. Any unused credits from any Set-Asides will be transferred to the Supplemental Set-Aside and used for Waiting List projects after the second round. Tax Credits reserved in all set-asides shall be counted within the housing type goals.

- (A) For an application to receive a reservation within a set-aside, or within a rural set-aside apportionment, there shall be at least one dollar of Credit not yet reserved in the set-aside or apportionment.
- (B) Set-aside applications requesting State tax credits shall be funded, even when State credits for that year have been exhausted. The necessary State credits shall be reserved from the subsequent year’s aggregate annual State credit allotment.
- (C) Except for projects competing in the rural set-aside, which shall not be eligible to compete in geographic area, unless the projects are located within a Geographic Region and no other projects have been funded within the Project’s region during the year in question, after a set-aside is reserved all remaining applications competing within the set-aside shall compete in the Geographic Region.

Federal Credit established by the FCAA application selection. Applications for projects located in the counties designated as qualified 2017 and 2018 California disaster areas by the FCAA, FCAA Federal Credit shall only be reserved for (1) new construction projects also including projects that involve the demolition or rehabilitation of existing residential units that increase the unit count by (i) 25 or (ii) 50% of the existing units, whichever is greater, and adaptive re-use of non-residential structures, or (2) reconstruction or rehabilitation of an existing project located ~~in~~ within a FCAA disaster area fire perimeter, as designated by CAL FIRE and available on the [CTCAC website](#), and directly damaged by the fire, and that apply for the FCAA Federal Credit. Applications shall meet all program eligibility requirements unless stated otherwise below, and located in the following counties: Butte, Lake, Los Angeles, Mendocino, Napa, Nevada, Orange, San Diego, Santa Barbara, Shasta, Sonoma, Ventura, and Yuba.

Applications for projects applying for FCAA Federal Credit shall be competitively scored within the county apportionment under the system delineated in Sections 10325(c)(1) through (3), (4)(B), and (6). In the cases

where applications receive the same score, the following tiebreakers shall be employed: First, a formal letter of support for the specific project from the Local Reviewing Agency (LRA) outlining how the project will contribute to the community's recovery efforts submitted in the application or received by TCAC no later than 14 days following the application filing deadline; Second, the application with the greatest number of proposed Tax Credit Units per annual Federal Tax Credit amount requested; and Third, the application with the greatest number of proposed bedrooms within the proposed Tax Credit Units.

For projects located within a FCAA disaster area fire perimeter, as designated by CAL FIRE and available on the [CTCAC website](#), applying for FCAA Federal Credit in the 2020 funding round ~~and in the 2021 first funding round~~, local approvals and zoning requirements of Section 10325(f)(4) must be evidenced to CTCAC no later than June 1, 2021. Failure to do so shall result in rescission of the Tax Credit Reservation on June 2, 2021. ~~For the 2021 second funding round, local approvals and zoning requirements shall be evidenced in the application as stated in Section 10325(f)(4). The deadline in this paragraph may be extended if the Executive Director finds, in his or her sole discretion, a project merits additional time due to delays directly caused by fire, war, or act of God. In considering a request the Executive Director may consider, among other things, the length of the delay and the circumstances relating to the delay.~~

The deferred-payment financing commitment requirements of Section 10325(f)(8) are modified for FCAA Federal Credit applications with 2017 and 2018 HCD Community Development Block Grant – Disaster Recovery (CDBG-DR) Multifamily financing as follows: a letter from an HCD identified jurisdiction stating the intent to commit a portion of that jurisdiction's HCD allocation. The letter must provide the dollar amount and the estimated date which the jurisdiction will provide TCAC a written commitment in compliance with the requirements of Section 10325(f)(8). Projects must receive these CDBG-DR funds prior to the TCAC placed-in service application deadline.

FCAA Federal Credit shall be made available starting in the 2020 second funding round in the amounts shown below:

| ANNUAL FEDERAL TAX CREDIT BASE + LOST UNIT ALLOCATION | COUNTY |
|--|---------------|
| \$40,087,453 | Butte |
| \$16,365,940 | Sonoma |
| \$5,630,499 | Los Angeles |
| \$5,421,263 | Shasta |
| \$4,975,965 | Ventura |
| \$4,109,511 | Napa |

| | |
|---------------------|---------------|
| \$3,342,311 | Mendocino |
| \$3,259,153 | Lake |
| \$2,886,283 | Yuba |
| \$2,816,537 | San Diego |
| \$2,583,158 | Santa Barbara |
| \$2,580,476 | Nevada |
| \$2,561,698 | Orange |
| \$2,000,000 | Supplemental |
| \$98,620,247 | TOTAL |

The funding order shall be followed by funding the highest scoring application, if any, in each of the 13 counties. After each county has had the opportunity to fund one project, TCAC shall award the second highest scoring project in each county, if any, and continue cycling through the counties, filling each county's apportionment.

For an application to receive a FCAA Federal Credit reservation, there shall be at least one dollar of Credit not yet reserved in the county allocation so long as the county's last award does not cause the county's aggregate award amount to exceed 105 percent (105%) of the amount originally available for that county. FCAA Federal Credit allocated in excess of the county's allocation by the application of the 105% rule described above will be deducted from the Supplemental allocation. If the last application requires credits in excess of 105% of the county's allocation, that application will not be funded. ~~Any FCAA Federal Credit remaining in a county apportionment at the end a funding round will be available in the subsequent round. For the final funding round of 2021 for FCAA Federal Credits, if the aggregate amount of Federal Credit requested does not exceed the amount available, the 105% county limit above shall not apply.~~ If all FCAA Federal Credit in a funding round has been awarded, all remaining FCAA applications shall compete in the applicable set-aside or geographic region, provided the application meets the requirements of the set-aside or geographic region, and the requirements of Section 10325.

At the conclusion of the ~~2021 second funding~~ round, ~~if less than 10% of the total FCAA Federal Credit remains~~, all unallocated FCAA Federal Credit within the county allocations will be combined and available to remaining projects requesting FCAA Federal Credits and which meet the threshold and underwriting requirements ~~through a waiting list~~. The award selection will be made ~~from the waiting list~~ to the counties in the order listed above. Within each county, the award selection will start with ~~the~~ highest ranking project ~~located within a FCAA disaster area fire perimeter, as designated by CAL FIRE and available on the CTCAC website first~~ and continue within that county ~~in rank order~~ until no eligible applications remain. Subsequent to the above selection ranking, any unused FCAA Federal Credit shall be designated for projects where at least fifty percent (50%) of the Low-Income Units within the project are designated for homeless households

as described in Sections 10315(b)(1) through (4) starting with the highest ranking project pursuant to Section 10325(c) without regard to the set aside or geographic region for which the application applied.

All projects awarded FCAA Federal Credit in 2020 shall be able to begin construction no later than September 1, 2021. Failure to be able to begin construction by September 1, 2021 shall result in rescission of the Tax Credit Reservation. No later than September 1, 2021, the applicant must submit to CTCAC building permits (a grading permit does not suffice to meet this requirement except that in the event that the city or county as a rule does not issue building permits prior to the completion of grading, a grading permit shall suffice; if the project is a design-build project in which the city or county does not issue building permits until designs are fully complete, the city or county shall have approved construction to begin) or the applicable tribal documents, and notice to proceed delivered to the contractor. Any returned credits following September 1, 2021 will be made available to projects from the FCAA Federal Credit waiting list as previously stated. Any new application received for a project on the waiting list shall result in that project's removal from the waiting list. Any projects awarded FCAA Federal Credit in 2021 shall be able to begin construction within 180 days of Credit Reservation and as documented above. Failure to be able to begin construction within 180 days shall result in rescission of the Tax Credit Reservation. The deadlines in this paragraph may be extended if the Executive Director finds, in his or her sole discretion, a project merits additional time due to delays directly caused by fire, war, or act of God. In considering a request the Executive Director may consider, among other things, the length of the delay and the circumstances relating to the delay.

The FCAA Federal Credit amount shall not be counted towards the set asides of Section 10315, the housing type goals of Section 10315(h), or the geographic apportionments of Section 10315(i). Applications for FCAA Federal Credit shall not be counted towards the four (4) awards limit of Section 10325(c). Notwithstanding Section 10325(f)(9)(C), the maximum annual Federal Tax Credits available for award to any one project in any funding round applying for FCAA Federal Credit shall not exceed Five Million Dollars (\$5,000,000). Applications for FCAA Federal Credit are not eligible for State Tax Credits.

Comments Received: Staff received two (2) comments in support of granting the Executive Director authority to extend the deadline to evidence that the local approvals and zoning requirements of Section 10325(f)(4) have been met. Both commenters added that such authority should be available to the Executive Director in an even wider range of circumstances, specifically noting the COVID-19 pandemic.

Staff received a total of 12 comments relating to the allocation of the remaining FCAA Federal Credit in 2020 in lieu of additional funding rounds in 2021. Two (2) commenters supported the utilization of the remaining FCAA Federal Credit in the form of a waiting list starting with the counties in the order listed starting with the highest-ranking project located within a FCAA disaster area fire perimeter consistent with Congressman Mike Thompson's intent that credits be allocated to the most directly impacted areas from the wildfires. Seven (7) commenters opposed the proposed change to employ the waiting list in 2020 to allocate the remaining FCAA Federal Credit. Specifically, the commenters opposing the proposed change identified Shasta County as having

approximately \$2.8 million in annual FCAA Federal Credit remaining following the round. The seven commenters believe that Shasta County should be entitled to the remaining amount and the credits should not be given to another county. The commenters stated that developers planned to use the full \$5.4 million in the county to help the victims of the Carr Fire in addition to the current wildfires. Some commenters noted that smaller California jurisdictions like Shasta County can face serious hurdles in competing for affordable-housing dollars, and changing the rules of this program when qualifying projects are in the pipeline would throw yet another barrier in the path.

Staff received five (5) comments with regard to the establishment a September 1, 2021 construction start date requirement for projects awarded FCAA Federal Credit. Two (2) commenters opposed the proposed change noting some of the reasons being that the readiness to proceed requirement was specifically excluded from the scoring criteria when the regulations were initially adopted thereby not requiring a construction start date and precedence setting to make changes after submitted and awarded applications for feasible projects that would now be infeasible. One commenter stated that the September 1, 2021 construction start date was too far out to rescind credits and should be earlier. The commenter added that by preventing waiting list projects from applying for alternative credits while remaining on the waiting list delays those projects from moving forward. With regard to the extension provision to the September 1, 2021 construction start date, some commenters stated the discretion to the executive director should be widened given the COVID-19 pandemic.

Response to Comments: With regard to the deadline to evidence the local approvals and zoning requirements of Section 10325(f)(4) have been met, staff will proceed with proposed change.

While some comments received state Shasta County is entitled to the full amount in the original county allocation, the aggregation of the counties' remaining credits at the conclusion of the recently concluded round (final round) is unchanged from the current regulations; it is just being accelerated given the demand in first round. With less than 10% of the FCAA Federal Credit remaining, staff believes allocating the small amount of remaining credits in 2020 is in line with the current regulations as it relates to the final round and the most efficient way to deploy the credits to accelerate the development of the housing in the most impacted areas. As previously stated and consistent with Congressman Mike Thompson's intent that the FCAA Federal Credit be allocated to those areas directly impacted from the wildfires in 2017 and 2018 in an effort to rebuild those communities and aid in the recovery, the proposed changes will accomplish that as originally envisioned following the final round and will expedite the deployment of the remaining FCAA Federal Credit in 2020 and to maintain eligibility for the National Pool credits.

Staff proposed the September 1, 2021 construction start date in an effort to allow sufficient time to re-allocate any returned FCAA Federal Credit from projects that could not move forward to projects on the waiting list. Staff agrees that the readiness to proceed point category was exempt from the scoring criteria for FCAA Federal Credit applications thereby not requiring a construction start date. In response to comments, staff believes an alternative way to accomplish the intent is to allow projects to move forward without a construction start date but require that the applicant to decide by September 1, 2021 if they will move forward with the project. Negative points will not be assessed to those projects that return their FCAA Federal Credit allocation on or prior to September 1, 2021. However, projects moving forward past the September 1, 2021 deadline and unable to meet the federal and state requirements shall be assessed negative points. With regard to the waiting list, staff believes a project applying for alternative tax credits while concurrently remaining on the waiting list is not consistent with current regulations. Allowing multiple financing versions of the same

application increases competition for limited resources and utilizes additional staff resources. The proposed change reflects the current practice of not allowing concurrent 9% and 4% credit applications. Waiting list applicants will need to make the decision to move forward by applying for other credits or remain on the waiting list in event FCAA Federal Credit become available.

Final Proposed Change: Proceed with changes as initially proposed, but with the highlighted edits.

- (2) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside, followed by the Rural set-aside (funding the RHS and HOME program apportionment first, and the Tribal pilot apportionment second), the At Risk set-aside, and the Special Needs set-aside, the highest scoring applications will have Tax Credits reserved. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315, with the exception of the Federal Credit amount established by the Further Consolidated Appropriations Act, 2020 ("FCAA"). If the last project funded in a set-aside requires more than the credits remaining in that set-aside, such overages in the first funding round will be subtracted from that set-aside in determining the amount available in the set-aside for the second funding round. If Credits are not reserved in the first round they will be added to second round amounts in the same Set Aside. If more Tax Credits are reserved to the last project in a set-aside than are available in that set-aside during the second funding round, the overage will be taken from the Supplemental Set-Aside if there are sufficient funds. If not, the award will be counted against the amounts available from the geographic area in which the project is located. Any unused credits from any Set-Asides will be transferred to the Supplemental Set-Aside and used for Waiting List projects after the second round. Tax Credits reserved in all set-asides shall be counted within the housing type goals.
- (C) For an application to receive a reservation within a set-aside, or within a rural set-aside apportionment, there shall be at least one dollar of Credit not yet reserved in the set-aside or apportionment.
- (D) Set-aside applications requesting State tax credits shall be funded, even when State credits for that year have been exhausted. The necessary State credits shall be reserved from the subsequent year's aggregate annual State credit allotment.
- (D) Except for projects competing in the rural set-aside, which shall not be eligible to compete in geographic area, unless the projects are located within a Geographic Region and no other projects have been funded within the Project's region during the year in question, after a set-aside is reserved all remaining applications competing within the set-aside shall compete in the Geographic Region.

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increase the unit count by (i) 25 or (ii) 50% of the existing units, whichever is greater, and adaptive re-use of non-residential structures, or (2) reconstruction or rehabilitation of an existing project located ~~in~~ within a FCAA disaster area fire perimeter, as designated by CAL FIRE and available on the [CTCAC website](#), and directly damaged by the fire, and that apply for the FCAA Federal Credit. Applications shall meet all program eligibility requirements unless stated otherwise below, and located in the following counties: Butte, Lake, Los Angeles, Mendocino, Napa, Nevada, Orange, San Diego, Santa Barbara, Shasta, Sonoma, Ventura, and Yuba.

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| \$2,583,158 | Santa Barbara |
| \$2,580,476 | Nevada |
| \$2,561,698 | Orange |
| \$2,000,000 | Supplemental |
| \$98,620,247 | TOTAL |

The funding order shall be followed by funding the highest scoring application, if any, in each of the 13 counties. After each county has had the opportunity to fund one project, TCAC shall award the second highest scoring project in each county, if any, and continue cycling through the counties, filling each county's apportionment.

For an application to receive a FCAA Federal Credit reservation, there shall be at least one dollar of Credit not yet reserved in the county allocation so long as the county's last award does not cause the county's aggregate award amount to exceed 105 percent (105%) of the amount originally available for that county. FCAA Federal Credit allocated in excess of the county's allocation by the application of the 105% rule described above will be deducted from the Supplemental allocation. If the last application requires credits in excess of 105% of the county's allocation, that application will not be funded. ~~Any FCAA Federal Credit remaining in a county apportionment at the end a funding round will be available in the subsequent round. For the final funding round of 2021 for FCAA Federal Credits, if the aggregate amount of Federal Credit requested does not exceed the amount available, the 105% county limit above shall not apply.~~ If all FCAA Federal Credit in a funding round has been awarded, all remaining FCAA applications shall compete in the applicable set-aside or

geographic region, provided the application meets the requirements of the set-aside or geographic region, and the requirements of Section 10325.

At the conclusion of the 2021 second funding round, if less than 10% of the total FCAA Federal Credit remains, all unallocated FCAA Federal Credit within the county allocations will be combined and available to remaining projects requesting FCAA Federal Credits and which meet the threshold and underwriting requirements through a waiting list. The award selection will be made from the waiting list to the counties in the order listed above. Within each county, the award selection will start with the highest ranking project located within a FCAA disaster area fire perimeter, as designated by CAL FIRE and available on the CTCAC website first and continue within that county in rank order until no eligible applications remain. Subsequent to the above selection ranking, any unused FCAA Federal Credit shall be designated for projects where at least fifty percent (50%) of the Low-Income Units within the project are designated for homeless households as described in Sections 10315(b)(1) through (4) starting with the highest ranking project pursuant to Section 10325(c) without regard to the set aside or geographic region for which the application applied.

All projects awarded FCAA Federal Credit in 2020 may return their allocation to the Committee without assessment of negative points if the formal written notification from the applicant of the return is received by the Committee shall be able to begin construction no later than September 1, 2021. Failure to be able to begin construction by September 1, 2021 shall result in rescission of the Tax Credit Reservation. No later than September 1, 2021, the applicant must submit to CTCAC building permits (a grading permit does not suffice to meet this requirement except that in the event that the city or county as a rule does not issue building permits prior to the completion of grading, a grading permit shall suffice; if the project is a design-build project in which the city or county does not issue building permits until designs are fully complete, the city or county shall have approved construction to begin) or the applicable tribal documents, and notice to proceed delivered to the contractor. Any returned credits following September 1, 2021 will be made available to projects from the FCAA Federal Credit waiting list as previously stated. Any new application received for a project on the waiting list shall result in that project's removal from the waiting list. Any projects awarded FCAA Federal Credit in 2021 shall be able to begin construction within 180 days of Credit Reservation and as documented above. Failure to be able to begin construction within 180 days shall result in rescission of the Tax Credit Reservation. The deadlines in this paragraph may be extended if the Executive Director finds, in his or her sole discretion, a project merits additional time due to delays directly caused by fire, war, or act of God. In considering a request the Executive Director may consider, among other things, the length of the delay and the circumstances relating to the delay.

The FCAA Federal Credit amount shall not be counted towards the set asides of Section 10315, the housing type goals of Section 10315(h), or the geographic apportionments of Section 10315(i). Applications for FCAA Federal Credit shall not be counted towards the four (4) awards limit of Section 10325(c). Notwithstanding Section 10325(f)(9)(C), the maximum annual Federal Tax Credits available for award to any one project in any funding round applying for FCAA Federal Credit shall not exceed Five

Million Dollars (\$5,000,000). Applications for FCAA Federal Credit are not eligible for State Tax Credits.
